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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.L., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

S.A.,

Defendant and Appellant.

G056948

(Super. Ct. No. 17DP0807)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Katherine Lewis, Judge. Reversed and remanded.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant
and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen, and Jeannie Su,
Deputy County Counsel, for Plaintiff and Respondent.

No appearance made for the Minor.

* * *

S.A. (Mother) appeals from judgment terminating her parental rights to her son, J.L. Mother's sole contention on appeal is that the court failed in both its duty of inquiry and notice under the Indian Child Welfare Act (ICWA). Orange County Social Services Agency (SSA) concedes there was error and urges the court to remand only for compliance with ICWA. We agree there was error and remand the matter to the juvenile court for the sole purpose of ICWA compliance.

FACTS

An extensive recitation of the facts giving rise to the dependency proceeding and those concerning the reunification period are not relevant to the discrete issue raised in this appeal and need not be summarized. We will limit our discussion to the undisputed facts related to the ICWA issue.

Mother was 17 years old when she gave birth to J.L. in December 2016. When J.L. was two weeks old, his father, J.G. (Father), was the victim of a drive-by shooting. Throughout these dependency proceedings he has been in a comatose state and hospitalized.¹

In July 2017, when J.L. was seven months old, Mother's boyfriend was responsible for a significant traffic accident and he fled the scene holding J.L. in his arms. He eventually dropped the child on the pavement as he was running away. Police later found Mother, who smelled of alcohol, running along the street trying to catch up with J.L. and her boyfriend. Police discovered a marijuana pipe in the child's diaper bag. J.L. was treated at the hospital for scratches and bruises.

¹

The child's father is not a party to this appeal.

The SSA detained J.L. and placed him in foster care. It filed a petition, alleging the child came within the provisions of Welfare and Institutions Code section 300, subdivisions (b) (substantial risk of harm to child) and (g) (child left without any provision for support).² At the detention hearing, Mother denied having any Native American Indian heritage. Father was not present, but his counsel indicated she did not have any reason to believe Father had any Native American Indian heritage. Based on these representations, the court ruled ICWA did not apply.

In SSA's report prepared for the September 2017 jurisdictional hearing, the social worker indicated the child's paternal grandmother reported J.L. could have American Indian heritage from her side of the family. She did not provide the social worker with any additional information. At the hearing, the court found the amended petition to be true and made no reference to ICWA.

At the dispositional hearing, the court did not make any orders regarding application of ICWA. It declared J.L. a dependent child and approved SSA's proposed case plan for Mother. At the six-month review hearing, the court determined Mother only made minimal progress with her case plan and terminated services. It scheduled a hearing to determine a permanent plan for J.L., pursuant to section 366.26 (permanency hearing).

The social worker's reports for both the six-month review hearing and the permanency hearing indicated the court determined in July 2017 (at the detention hearing) that ICWA "does not apply at this time."

At the permanency hearing, the court determined J.L. was adoptable and it terminated Mother's and Father's parental rights. It made no further orders regarding application of the ICWA.

²

All further statutory references are to the Welfare and Institutions Code.

DISCUSSION

On appeal, Mother alleges the juvenile court and SSA failed to comply with the inquiry and notice requirements of ICWA. (25 U.S.C. § 1901 et seq.; § 224.3, subd. (a).) SSA agrees. It concedes that once the paternal grandmother reported possible Indian heritage, SSA should have inquired further and sent out notices to the Bureau of Indian Affairs (BIA) and any relevant tribes. It acknowledges the juvenile court erroneously failed to make sure these actions were done.

“The minimum standards established by ICWA include the requirement of notice to Indian tribes in any involuntary proceeding in state court to place a child in foster care or to terminate parental rights ‘where the court knows or has reason to know that an Indian child is involved.’ [Citation.] ‘If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have [15] days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.’ [Citation.] The ‘Secretary’ refers to the United States Secretary of the Interior [citation], whose department includes the BIA.” (*In re Isaiah W.* (2016) 1 Cal.5th 1, 8.)

After independently reviewing the record, we accept SSA’s concession that it and the juvenile court did not perform the inquiry and notice required by ICWA. We agree with SSA that the appropriate remedy is to grant a limited reversal and remand the matter to the juvenile court to permit compliance with the ICWA notice requirements, and upon compliance, to enable the juvenile court to reinstate its orders if no Indian tribe wishes to intervene. (*In re I.B.* (2015) 239 Cal.App.4th 367, 375-376.)

DISPOSITION

The judgment terminating parental rights is reversed as to both parents³ and the matter is remanded to the juvenile court with directions to reappoint counsel for the parents, hold a hearing to consider if additional orders are required given the confidential nature of the adoption report, and set a ICWA notice review hearing. At the review hearing, the court must determine whether SSA complied with the notice provisions of ICWA and issue an order regarding whether ICWA applies. If ICWA applies, the court shall proceed according to those provisions. If it does not apply, the juvenile court shall reinstate all previous findings and orders made at the permanency hearing.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.

³

Although Mother is the only party appealing the judgment, any reversal of an order terminating parental rights should be as to both parents. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 208.)